D.B. CIVIL SPECIAL APPEAL(W)NO.148/2006

Ram Niwas Das
Vs.
State of Rajasthan & Ors.

DATE OF ORDER :: 16-05-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Saket Pareek, for the appellant.
Shri H.V. Nandwana, Dy.G.A. for the State.

This special appeal is directed against the order of the learned Single Judge dated 8.11.2005 dismissing the application for setting aside abatement of a writ petition . Earlier while dismissing the writ petition on 26.8.2005 as having abated, liberty had been given to the appellant to file application for setting aside the abatement to be dealt with in accordance with law. The appellant filed application for review of the order dated 8.11.2005 which was dismissed.

Facts of the case are that one Madhav Das filed D.B. Civil Writ Petition no.1826/1975 challenging orders of the authorities under the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973. As circumstance would have it, the writ petition stood dismissed for non-prosecution on 18.5.1984. No application for restoration of the writ petition was filed until 9.7.2004. In the meantime, Madhav Das had died in the year 1994. The case of the appellant is that on the death of Madhav Das he succeeded him a 'Chela'

but he was not aware of the pending case and therefore did not take steps to get himself substituted nor steps could be taken for restoration of the writ petition which had stood dismissed in the meantime on 18.5.1984. On 9.7.2004, after coming to know about the dismissal of the writ petition, application was filed for restoration which was allowed on 31.8.2004, but soon after on 26.8.2005 writ petition came to be dismissed as having abated as mentioned above, he filed application for setting aside the abatement in the light of the observations made in the order.

It was submitted on behalf of the appellant that the property belongs to Dadupanthi Samaj and steps for setting aside abatement could not be taken on account of the fact that the appellant was in custody in connection with a criminal case; in the circumstances, he appointed one Madhusudan Das as attorney who took steps for restoration of the writ petition and setting aside abatement. The application was filed in the light of the order dated 26.8.2005 without any further delay. It was submitted that the writ petition was restored after condoning delay of twenty years on being satisfied about the cause and the learned Single Judge should have set aside the abatement on the same grounds. We find substance in the submission of the counsel.

The writ petition, as seen above, was dismissed for non-prosecution on 19.5.1984 but restored after twenty years on 31.8.2004. Having restored the writ petition on being satisfied about the sufficiency of the cause, the learned Single Judge should have condoned the delay caused by the same very circumstance, and set aside abatement so that the matter could be decided on merit.

We accordingly set aside the impugned order dated 8.11.2005 in Civil Misc. Application no.468/2005 as also the order dated 9.1.2006 in Misc. Review Petition no.166/2005, set aside abatement and direct that the appellant Ram Niwas Das be substituted in place of the original petitioner Madhav Das.

The appeal thus stands disposed of.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Praveen